REMARKS/ARGUMENTS

Preliminary to the reconsideration of the above application, please consider the foregoing amendments to the specification, abstract, and claims and the following remarks.

Prior to filing the Request for Continued Examination, the status of the claims were that all claims had been finally rejected. After the above amendments, the currently pending claims are: Claims 1, 3-10, 12-21, and newly presented claims 26-31.

The amendments to the specification and claims are to correct an obvious typographical error on page 9, line 3, (support for this range is in claim 8 as originally filed), and provides a better term for the term "chippings." These amendments do not involve the addition of new matter and therefore, these amendments are proper.

In the final rejection of December 21, 2005, the examiner has rejected claims 1, and 3-25 under 35 U.S.C. §103(a) as unpatentable over FR2689051, hereinafter "the French '051 patent." The currently presented claims should be considered as patentable and any further rejection based on the French '051 patent is unwarranted.

The examiner has cited the French '051 patent for the proposition that it would be obvious to modify certain parameters, such as chip size, temperature, and moisture content. However, the French '051 patent does not describe a method that will achieve the results of the method as described and claimed in the present application. Nor is the disclosure of the French '051 such that it would suggest the method as claimed in the present application to a person of ordinary skill in the art. In particular, the French '051 patent does not disclose or suggest the step of drying a portion of the aggregate that has substantially no fines, drying the first portion at a temperature of at least 100° C, having only the second portion at a low temperature and moist, and vaporizing the moisture in the second portion during mixing to cause the bitumen to expand. The French '051 patent only discloses a method where all the aggregate is either cold or heated, but not where a portion is heated and a portion remains cold. A copy of a translation of the French '051 patent is being obtained and will be provided in an Information Disclosure Statement filed subsequent to this Amendment.

One important advantage of the methods as claimed is a saving of energy by heating a portion of the aggregate that is substantially free from fines. Another advantage is that the

mixture has excellent properties at a low temperature. In addition, the excellent coating of the mixture and the resultant excellent layability of the resulting mixture would not have been obvious to one of ordinary skill in the art based on the disclosure of the French '051 patent. The materials of the French '051 patent are only suitable for making small patch type of repairs or use as the under layer of a roadway, whereas the materials that result from the methods as claimed are suitable for use in large paving situations including laying the final roadway surface. As evidence of the properties resulting from the methods as claimed, the examiner's attention is directed to the attached two articles relative to an embodiment the method as claimed. As noted in the articles, the use of the moist unheated aggregate allows the bitumen to expand during mixing. This is not disclosed or suggested by the French '052 patent.

With regard to the method as claimed in new claims 26 and 27, the French '051 patent does not disclose heating a portion of the aggregate above 150° C. In the method of these claims, the second portion of the aggregate is also unheated and moist, allowing the resulting mixture to expand to create an excellent paving material. This is not disclosed or suggested by the French '051 patent. Therefore, any further rejection of the currently pending claims based on the French '051 patent would appear unwarranted and the examiner is requested to indicate that these claims are now allowable.

The examiner has also rejected claims 1, and 3-25 under 35 U.S.C. §103(a) as unpatentable over GB430979, hereinafter "the British '979 patent." The currently presented claims should be considered as patentable and any further rejection based on the British '979 patent is unwarranted.

The British '979 patent fails to disclose many aspects of the method now claimed. In particular, the British '979 patent fails to disclose the heating of a first portion of the aggregate to at least 100° C. This is important because without sufficient heating of the first portion of the aggregate, the moisture added to the second portion cannot be vaporized to expand the bitumen as claimed. The British '979 patent also fails to disclose adding moisture to a second portion of the aggregate and as noted above, does not disclose the vaporization of a portion of the water to expand the bitumen.

With regard to claims 26 and 27, the British '979 patent also fails to disclose or suggest the feature in the claims as well. Further, as noted above, the features in the claims lead to a result that was not obvious to one of ordinary skill at the time the invention now claimed was made. Therefore, the continued rejection of the present application based on the British '979 patent is unwarranted and this application should be allowed.

Applicants have attempted to place this application in condition for allowance. An early indication of allowability is requested.

Deposit Account Authorization

The Commissioner is hereby authorized to charge any deficiency in any amount enclosed or any additional fees which may be required during the pendency of this application under 37 CFR 1.16 or 1.17, except issue fees, to Deposit Account No. 50-1903.

Respectfully submitted,

McCracken & Frank LLP
200 W. Adams
Suite 2150
Chicago, Illinois 60606
(312) 263-4700

By: _____

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J. William Frank, III
Reg. No: 25,626